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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1967

NO. 962

THOMAS A. McMANIGAL,

Petitioner,

vs.

SEYMOUR SIMON, et al.,

Respondents.

Petition For Writ Of Certiorari To The
United States Court Of Appeals
For The Seventh Circuit.

PETITION FOR REHEARING

Charles V. Falkenberg,
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Attorney for Petitioner.

William Hettleman,
Of Counsel.

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PETITION FOR REHEARING

To The Honorable Chief Justice and Associate Justices of the Supreme Court of the U.S.

Comes now Thomas A. McManigal and prays that this Court grant rehearing of its order of March 11,1968, denying the petition for writ of certiorari, and that a writ of certiorari issue to review the judgment of the Court of Appeals for the Second Circuit in the above entitled case as prayed for in the petition filed January 26,1968 herein.

REASONS FOR GRANTING REHEARING AND ISSUING WRIT

1. Aside from showing the substantial constitutional questions involved, and the general importance of whether a quasi-municipality may appropriate property without compensation, as asubstitute for condemnation procedures, the petition for certiorari stressed the conflict between the judgment of the lower federal courts and a relativaly recent case in this Court, and between the scope of review in the Seventh and Ninth Circuits on precisely the identical, or similar, issues, sought to be reviewed in both courts.

2. A preliminary print in the Advance Sheets of the Federal Reporter for March 11, 1968, the same day the petition for certiorari herein was denied, contains the opinion of the Second Circuit in Wright v. McMenn, 387 Fed. 2d 519 on appeal from the trial cougt's grant of a motion to dismiss a complaint which conflicts with the practice of disregarding the rule that the facts in the pleadings must be taken as true, in the opinion of the Seventh Circuit in the case at bar, and which led the latter Court into crutial error.

The parties agreed that the Appendix, filed in the appeal to the Seventh Circuit, shall be the Record in this Court. P. 7, par. 8 thereof, contains the allegations of the Amended Complaint, stating very specifically that, at the members' special meeting on June 18, 1965, their almost unanimous vote (600: 13) was against donating the corporate assets to Cook County, or permitting the use of its name to file a cy pres suit therefor. Contrary to this Record, the Seventh Circuit's opinion (p. 3a, last par., pet. for writ of cert.) stated the "complaint shows simply a dispute between some members" etc.

3. The Amended Complaint was grounded on Ex Parte Young, 209 U.S.123, seeking to enjoin contemplated action in state courts to enforce Cook County's ordinances whose application to the facts in the case infringed the constitutional rights of the members. It was dismissed sua sponte on sec. 2283 and this Court's allegedly supporting decision of Dombrowski, 380 U.S. 479, which really held for the petitioner McManigal's contention. Marshall v. Sawyer, 301 F(2) 639, 647(9th CA) confined the scope of the appeal to that issue. The Seventh Circuit did not even refer to Dombrowski and enlarged the scope of the appeal beyond sec. 2283 and Dombrowski's applicability, contrary to the Ninth Circuit's practice.

CONCLUSION

In the interest of uniformity in federal practice and procedure, and for the reasons in the petition for certiorari, it is urged respectfully that rehearing be granted, and that, upon such rehearing, a writ of certiorari issue to the Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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Pursuant to Rule 58, I hereby certify that the foregoing is presented in good faith, not for delay, and is restricted to the grounds specified in par. 2 thereof.

Charles V. Falkenberg